HEWLETT-PACKARD COMPANY
Intellectual Property Administration
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PATENT APPLICATION

ATTORNEY DOCKET NO.   10019419-1

**IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

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JUL 1 3 2005

Inventor(s): Eric Gentry	Confirmation No.: 2237
Application No.: 09/943,879	Examiner: A. Khatri
Filing Date: Aug. 31, 2001	Group Art Unit: 2124
Title: System And Method For Installing Window Installer Service Without Rebooting	

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on **May 17, 2005**   .

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d))
for the total number of months checked below:

     ( ) one month $120.00
     ( ) two months $450.00
     ( ) three months $1020.00
     ( ) four months $1590.00

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   ( ) The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of _____$500.00_____. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

Eric Gentry

By _____
Steven R. Ormiston

Attorney/Agent for Applicant(s)

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Eric Gentry)	
)	Attorney
Serial No: 09/943,879)	Docket Number: 10019419-1
)	
Filed: August 31, 2001)	Group Art Unit: 2124
)	
Title: System And Method For)	Examiner: A. Khatri
Installing Window Installer)	
Service Without Rebooting)	

APPELLANT'S/APPLICANT'S OPENING BRIEF ON APPEAL

1.   REAL PARTY IN INTEREST.

The real party in interest is Hewlett-Packard Development Company, LP, a
limited partnership established under the laws of the State of Texas and having a
principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter
"HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of
Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA.
The general or managing partner of HPDC is HPQ Holding, LLC.

2.   RELATED APPEALS AND INTERFERENCES.

There are no other appeals or interferences known to Appellant, Appellant's
legal representative or the Assignee which will affect or be directly affected by or have
a bearing on the Board's decision in the pending appeal.

3.   STATUS OF CLAIMS.

Claims 1-25 are pending. The rejection of all pending claims is appealed.

4.   STATUS OF AMENDMENTS.

No amendments were filed after the final action.

5.   SUMMARY OF CLAIMED SUBJECT MATTER.

Claim 1 is directed to an install system with reboot suppression for use with a computer. The system of Claim 1 includes a means for loading the install system to a temporary directory (launcher setup 110 in Fig. 2; step 122 in Fig. 5, Specification, page 15, lines 22-24), a means for setting a path for the install system as the temporary directory (launcher setup 110 in Fig. 2; step 123 in Fig. 5, Specification, page 16, lines 5-15), and a means for executing the install system from the temporary directory (install system 70 in Fig. 2; step 81 in Fig. 3; Specification, page 12, lines 5-8).

Claims 6, 11 and 16, which are method, computer medium and system (without means plus function elements) counterparts, respectively, to the system of Claim 1, recite similar limitations.

Claim 21 is directed to a method that includes loading an install system to a temporary directory without registering the install system with the operating system (step 122 in Fig. 5, Specification, page 15, line 22 through page 16, line 13) and executing the install system from the temporary directory without restarting the operating system (step 81 in Fig. 3; Specification, page 12, lines 5-8).

6.   GROUNDS FOR REJECTION TO BE REVIEWED.

A.   Byer does not teach loading an install system to a temporary directory or setting a path for the install system as the temporary directory or executing the install system from the temporary directory (Claims 1-25).

B.   The Office has failed to make any showing whatsoever that Byer teaches executing an install system from the temporary directory *without rebooting an operating system* (Claims 6-10).

C.   The Office has failed to make any showing whatsoever that Byer teaches loading an install system to a temporary directory *without registering the install system*

with the operating system and executing the install system from the temporary directory *without restarting the operating system* (Claims 21-25).

7.   ARGUMENT.

A.   Ground For Rejection A (Claims 1-25) – Byer does not teach loading an install system to a temporary directory or setting a path for the install system as the temporary directory or executing the install system from the temporary directory.

Claims 1-25 were rejected under Section 102 as being anticipated by Byer (6684397). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. As this Board has recognized, "it is now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office." In re Skinner, 2 USPQ2d 1788, 1788-89 (BPAI 1986; see also Ex parte Natale, 11 USPQ 2d 1222, 1226 (BPAI 1989). The Office has failed to carry this burden as to any of the claims.

Claim 1 recites a system that includes means for loading an install system to a temporary directory, setting a path for the install system as the temporary directory, and executing the install system from the temporary directory. Claim 11 recites a computer readable medium that includes logic for loading an install system to a temporary directory, setting a path for the install system as the temporary directory, and executing the install system from the temporary directory. Claim 16 recites a system that includes a load mechanism that loads an install system to a temporary directory, a directory mechanism that sets a path for the install system as the temporary directory, and an executing mechanism that executes the install system from the temporary directory.

Claim 6 recites a method that includes loading an install system to a temporary directory, setting a path for the install system as the temporary directory, and executing the install system from the temporary directory without rebooting an operating system.

Claim 21 recites a method that includes loading an install system to a temporary directory without registering the install system with the operating system and executing the install system from the temporary directory without restarting the operating system.

The entirety of the Office's analysis in the first Office Action in support of the rejection of Claims 1, 6, 11, 16 and 21 is set forth verbatim below.

> "*Byer et al teaches,*
>   - means for loading the install system to a temporary directory (column 4, lines 11-17, 'installing software ... on the first processor");
>   - means for setting a path for the install system as the temporary directory (column 4, lines 25-29, 'before installing the operating system ... network server'); and
>   - means for executing the install system from the temporary directory (columns 3-4, lines 65, 'the data structure ... installation of the software')." Office Action, page 3.

The Office's conclusions based on Byer are not correct. Byer at columns 3-4 describes a method for remotely installing software using a master process and a slave process. Byer does not describe loading an install system (or anything else) to a temporary directory or setting a path for the install system (or anything else) as the temporary directory or executing the install system (or anything else) from the temporary directory. Byer does not even mention a temporary directory. There is no indication that the "data structures" noted by the Office at column 3, line 65, of Byer are stored in a temporary directory. On the contrary, Byer teaches only that the "memory and/or storage utilized with the present invention contains data structures used in remotely installing software." Byer, column 3, lines 63-65. There is just nothing in the passages from Byer cited by the Office that teach or suggest anything about the use of a temporary directory in the loading and execution of an install system or any other type of programming.

The Office's response in the final Action to Applicant's explanation of Byer is set forth verbatim below.

> "I) It was noted that cited prior art *fairly suggests* loading and installing software in a memory or in a directory (see figures 3-5 and 7). Further it was noted that cited reference speak about installing the new software on client machine with CD ROM/disk and also using master slave scheme to store software on slaves *which acts like a temporary directory* and user can pick what ever software is needed to install permanently on his machine (column 11, lines 4-11). With respectfully [sic] applicant needs to read and interpret the patent carefully. Thus limitations are met by the reference." Final Action, page 2 (emphasis added).

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PAGE 6/12 * RCVD AT 7/13/2005 4:58:09 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/7 * DNIS:8729306 * CSID:208 433 9295 * DURATION (mm-ss):03-40

First, the fact that a reference "fairly suggests" a claim element is irrelevant to anticipation under Section 102. As noted above, the reference must expressly or inherently disclose every claim element. It is not enough that the reference suggest a claim element.

Second, Byer does not teach that his master/slave scheme acts like a temporary directory. The passage cited by the Office, Byer column 11, lines 4-11, doesn't say anything about a temporary directory. If the Office feels this teaching is inherent in Byer column 11, lines 4-11, then it is obligated to say so and provide the requisite support.[1]

Third, even if it might somehow be assumed that Byer teaches a master/slave scheme that "acts like a temporary directory", the Office has still made no showing that this master/slave scheme meets the claim limitations – loading an install system to a temporary directory or setting a path for the install system as the temporary directory or executing the install system from the temporary directory.

And fourth, admonishing the Applicant to read and interpret Byer more carefully does not relieve the Office of its obligation to show that Byer teaches all claim limitations. The Office has not as yet fulfilled this obligation.

B.   Ground For Rejection B (Claims 6-10) – The Office has failed to make any showing whatsoever that Byer teaches executing an install system from the temporary directory _without rebooting an operating system_.

Further with regard to Claim 6, the Office has apparently failed to consider the limitation of executing the install system from the temporary directory _without rebooting an operating system_. The Office does not address the italicized limitation anywhere in either the first Action or the final Action. The rejection of Claim 6 and its dependent claims, therefore, must be withdrawn.

C.   Ground For Rejection C (Claims 21-25) – The Office has failed to make any showing whatsoever that Byer teaches loading an install system to a

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[1] To establish inherency, the Office must show that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. In relying upon the theory of inherency, the Office must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. MPEP § 2112, paragraph IV.

temporary directory *without registering the install system with the operating system* and executing the install system from the temporary directory *without restarting the operating system.*

Further with regard to Claim 21, the Office has apparently failed to consider the limitations of loading an install system to a temporary directory *without registering the install system with the operating system* and executing the install system from the temporary directory *without restarting the operating system.* The Office does not address the italicized limitations anywhere in either the first Action or the final Action. The rejection of Claim 21 and its dependent claims must, therefore, be withdrawn.

Respectfully submitted,

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APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

1.   An install system with reboot suppression used in conjunction with a computer system, the install system comprising:

means for loading the install system to a temporary directory;

means for setting a path for the install system as the temporary directory; and

means for executing the install system from the temporary directory.

2.   The system of claim 1, wherein the loading means further comprises:

means for loading the install system from a non-volatile memory source.

3.   The system of claim 1, wherein the loading means further comprises:

means for loading the install system from a network source.

4.   The system of claim 1, wherein the loading means further comprises:

means for loading the install system to a default directory.

5.   The system of claim 4, wherein the default directory loading means uses a default setting to load the install system to the default directory.

6.   A method for installing an install system on a computer system, the method comprising:

loading the install system to a temporary directory;

setting a path for the install system as the temporary directory; and

executing the install system from the temporary directory without rebooting an operating system.

7.   The method of claim 6, wherein the loading further comprises:

loading the install system from a non-volatile memory source.

8.   The method of claim 6, wherein the loading further comprises:

loading the install system from a network source.

9.   The method of claim 6, wherein the loading further comprises:
loading the install system to a default directory.

10.   The method of claim 9, wherein the loading the install system in the
default directory further comprises:
using default setting to load the install system.

11.   A computer readable medium having an install system with reboot
suppression used in conjunction with a computer system, comprising:
    logic for loading the install system to a temporary directory;
    logic for setting a path for the install system as the temporary directory; and
    logic for executing the install system from the temporary directory.

12.   The computer readable medium of claim 11, wherein the install system is
further comprises:
    logic for loading the install system from a non-volatile memory source.

13.   The computer readable medium of claim 11, wherein the install system is
further comprises:
    logic for loading the install system from a network source.

14.   The computer readable medium of claim 11, wherein the install system is
further comprises:
    logic for for loading the install system to a default directory.

15.   The computer readable medium of claim 14, wherein the install system is
further comprises:
    logic for using default setting to load the install system to the default directory.

16.   An install system with reboot suppression used in conjunction with a
computer system, the install system apparatus comprising:

load mechanism that loads the install system to a temporary directory;

directory mechanism that sets a path for the install system to the temporary directory; and

executing mechanism that executes the install system from the temporary directory.

17.   The system of claim 16, wherein the load mechanism further comprises: logic configured to load the install system from a non-volatile memory source.

18.   The system of claim 16, wherein the load mechanism further comprises: logic configured to load the install system from a network source.

19.   The system of claim 16, wherein the load mechanism further comprises: logic configured to load the install system to a default directory.

20.   The system of claim 19, wherein the logic configured to load the install system to the default directory uses default setting to load the install system to the default directory.

21.   A method for installing an install system on a computer system having an operating system, the method comprising:

loading the install system to a temporary directory without registering the install system with the operating system; and

executing the install system from the temporary directory without restarting the operating system.

22.   The method of claim 21, further comprising:

loading the install system to a default directory; and

registering the install system with the operating system.

23.   The method of claim 21, wherein the executing further comprises: executing the install system to install a software program on the computer system.

24.   The method of claim 23, wherein the installing further comprises: installing the software program from a network source.

25.   The method of claim 23, wherein the installing further comprises: installing the software program from a non-volatile memory source.